

REMARKS**I. Status of the Claims**

Claims 1-32 are currently pending in this application. Applicant wishes to thank the Examiner for the indication of allowable subject matter in regard to claims 6, 7, 9-11, 18, 24 and 26-29.

By this Amendment, claims 1, 8, 27-30 and 32 have been amended and claim 26 has been canceled without prejudice or disclaimer. Specifically, claims 1, 30 and 32 have been amended to incorporate the allowable subject matter of claim 26, and claims 27-29 have been amended to place them in independent, allowable form. No new matter has been introduced by this Amendment. Entry and consideration of this Amendment are respectfully requested. Upon entry of this Amendment, claims 1-25 and 27-32 would be pending.

II. Double Patenting Rejection

Claims 1-4, 13, 21, 22 and 30 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4-10 of U.S. co-pending Application No. 10/028,095 (Yasui et al.). Claim 31 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 7 of U.S. co-pending Application No. 10/028,095 (Yasui et al.).

Independent claims 1, 30 and 32 have been amended to incorporate the subject matter of allowable claim 26, namely, wherein the diffraction optical element is made of stacked layers or diffraction gratings. Thus, claims 1, 30 and 32 and their rejected dependent claims are believed to be distinguishable over the cited references. Accordingly, Applicants respectfully

request reconsideration and withdrawal of the obviousness-type double patenting rejection of the claims.

III. Rejections under 35 U.S.C. §103

Claims 1, 2, 5, 8, 12, 14, 16, 17, 19-23, 25 and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sekita et al. (U.S. Patent No. 5,253,113) in view of Soskind (U.S. 2002/0027712 A1). Claims 1 and 15 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Endo et al. (Japanese Patent Publication 5-313066) in view of Soskind (U.S. 2002/0027712 A1). Applicant respectfully traverses the rejection of these claims, for the reasons set forth below.

Independent claims 1, 30 and 32 have been amended to incorporate the subject matter of allowable claim 26, namely, wherein the diffraction optical element is made of stacked layers or diffraction gratings. Thus, claims 1, 30 and 32 and their rejected dependent claims are believed to be distinguishable over the cited references and allowable. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of the claims.

IV. Objection to Claims

The Examiner has objected to claims 6, 7, 9-11, 18, 24 and 26-29 as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Claims 27-29 have been amended to place them in independent, allowable form. As base claim 1 is believed to be allowable, reconsideration and withdrawal of the objection of the remaining objected dependent claims are respectfully requested.

CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

AUTHORIZATION

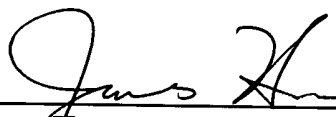
The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4503, Order No. 1232-4800.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4503, Order No. 1232-4800.

Respectfully submitted,
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